IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 144 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUBHASH S SHAH

Versus

STATE OF GUJARAT

Appearance:

MR KA PUJ for Petitioners

MR SP DAVE, APP, for Respondent No. 1

MR JM PANCHAL for MR BHAIRAVIYA for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/06/2000

CAV JUDGEMENT

1. Heard Mr. K.A. Puj, learned advocate for the petitioners and Mr. J.M. Panchal, learned advocate appearing for Mr. Bhairaviya, learned advocate for

respondent No.2 and Mr. S.P. Dave, learned Additional Public Prosecutor for respondent No.1-State.

2. The petitioners before this Court are accused Nos.1, 2 and 3 in Criminal Case No. 2479 of 1997 before the learned Chief Judicial Magistrate, Vadodara, in respect of the complaint for the offences punishable under Sections 406, 467, 504, 506(2) and 114 of Indian Penal Code.

3. The short facts leading to this petition are as under :-

3.1 The complainant runs Gujarat Road Well Limited and the said company had obtained finance from present petitioners. It is the case of the complainant that against the loan they have given certain share certificates to the present petitioners by way of security. The petitioners misused trust and mortgaged some of the shares, value of which was around Rs.1 crore. That the petitioners, in conspiracy and collusion with original accused No.4, opened account in the name of the company and deposited and immediately withdrew huge sum of money from the said account, and that is how, they have committed offences punishable under Sections 406, 467, 504, 506(2) and 114 of Indian Penal Code. When the complainant approached accused persons, they abused him and intimidated and this has given rise to the complaint. The learned Magistrate, after recording the statement of the complainant, took cognizance for the offences punishable under Sections 406, 467, 504, 506(2) land 114 of Indian Penal Code and directed issuance of bailable warrant to the tune of Rs.2000/-. Being aggrieved by this, the petitioners have preferred the present petition under Section 482 of the Code of Criminal Procedure.

4. The main grounds for the petition are that the complaint is false and frivolous and is lodged as counter blast against the civil litigations lodged by the petitioners. It has also been contended that the dispute between the parties is of a purely civil nature which is tried to be given colour of a criminal act. The complaint not only suppresses material facts but also false facts are narrated in the complaint and in this view of the matter, the petition may be allowed and the complaint may be quashed.

5. Mr. Puj, learned advocate for the petitioner, has tried to make out these grounds narrating the details. He has produced on record certain documents to indicate that according to the certain documents written

by the other side, it is apparent that the complaint is false and frivolous.

6. Mr. Panchal, learned advocate for respondent No.2, has opposed this petition. He has also produced number of documents to controvert the say of Mr. Puj.

7. Having heard learned advocates of parties at length and having considered the documents produced on record of this petition by rival sides, it is apparent that several disputed questions of fact are involved. In order to accept the version of the petitioner, the Court will have to travel beyond the scope of Section 482 of the Code of Criminal Procedure. The Court would also be required to draw presumptions, make conjectures to the favour of the petition, which the Court cannot do. The petitioner has failed to show that the complaint does not have the ingredients of the offences alleged in the complaint. This Court has to be slow in exercise of power under Section 482 of the Code of Criminal Procedure. The powers are to be exercised sparingly. In the opinion of this Court, present case does not call for any interference by this Court, at this stage, in exercise of power under Section 482 of the Code of Criminal Procedure. The contention raised on behalf of the petitioner can be raised in defence at the trial. The petition is, therefore, dismissed for want of merits. Rule is discharged. Interim relief granted earlier is vacated.

[A.L. DAVE, J.]
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